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HIGH COURT OF DELHI : NEW DELHI

Date of decision: 27th August, 2007

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W.P. (C) No. 1242-44/2006

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Union of India & Others. Petitioners
Through: Mr. R.V. Sinha with Mr. A.S.
Singh, Advocates
versus

Yashpal & Others Respondents
Through: Mr. D.R. Gupta, Advocate

CORAM:

HON'BLE MR.JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

VIPIN SANGHI, J (Oral)

1. Rule D.B. With the consent of parties we have heard final arguments and proceed to judgment.
2. The Petitioner, Union of India, has filed this Writ Petition to impugn the order dated 11.12.2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 1756/2004. The Tribunal by the said impugned order has quashed and set aside the order dated

19.7.2004 passed by the Petitioners whereby the Respondents (applicants before the Tribunal) were sought to be reverted from the post of Superintendent, Group B to the post of Inspector. The Tribunal further directed the Petitioner to continue the Respondents as Superintendent, Group B, as if they had never been reverted.

3. The Respondents were working as Inspectors with the recommendation of Commissioner, Customers Excise, New Delhi. The next promotional post is that of Superintendent, Group B. One of the essential conditions prescribed under the relevant promotion Rules was that the Inspectors should have 8 years experience as Inspector for being promoted to the post of Superintendent, Group B.

4. In July 2002, the Petitioner held a DPC meeting to consider the eligible candidates for the post of Superintendent, Group B, Central Excise. However, the Respondents and some other Junior officers in the grade of Inspectors were not considered for promotion even though they had the requisite qualifying service of 8 years as Inspectors. One Mr. Ghasi Ram Meena, and other eligible candidates, who were not considered by the DPC, for promotion to the post of Superintendent, Group B, challenged their exclusion from consideration by filing O.A. No.

2475/2002 titled as **Ghasi Ram Meena vs. Union of India**. The reason for their exclusion from consideration was that some of their seniors did not have the requisite experience of 8 years service in the grade of Inspectors. This O.A. was allowed by the Tribunal on 11.11.2003 and the following directions were issued:

“(a) that the claim of the applicants should be considered for promotion to Superintendent Group 'B' irrespective of the fact that their seniors had not fulfilled minimum qualification of 8 years of service.

(b) that the claim of the applicants can be considered only if they also fulfil the said qualifications as per the recruitment rules on a specific date for a particular year; and

(c) necessarily their claim has to be considered in accordance with the rules and instructions regarding which no further opinion need be expressed. They should be within the zone of consideration besides being eligible.”

5. Consequently, the review DPC was held by the Petitioner in February 2001 which considered the cases of the Respondents including others and the Respondents came out successful in the said selection process. They were accordingly promoted to the post of Superintendent, Group B vide order No. 18/2004 dated 12.2.2004 with effect from 23.9.2002.

6. After the Respondents had joined the promotional post, as a bold from the blues, without any prior notice they were

served with the order of reversion dated 19.7.2004 whereby they were reverted to the post of Inspectors. As aforesaid this order was challenged by the Respondents before the Tribunal.

7. The Petitioner justified the reversion of the Respondents on the ground that consequent upon the Central Board of Excise and Customs granting relaxation of qualifying service prescribed under the Recruitment Rules by one year to the Inspectors who did not have the qualifying service of 8 years in that grade, the Petitioner prepared the consideration list seniority wise which included the names of those Inspectors who had completed 7 years of service as on 1.1.2002 for consideration by a review DPC. The Petitioner contended that as a result of relaxation, a number of Inspectors who were seniors to the Respondents became eligible, and their cases were considered by the review DPC. The vacancies were consumed by senior Inspectors and no vacancies were left to accommodate the Respondents who were juniors in the feeder cadre. Therefore, the Respondents were reverted to their substantive post of Inspector.

8. The Tribunal did not accept the aforesaid justification given by the Petitioner and in our view, rightly so. The reasoning adopted by the Tribunal is contained in para 6 and 7 of the impugned order and the same reads as follows:

“6. We have heard both the counsel and perused the pleadings as well. It is admitted position that in July 2002, when DPC met for the first time to consider the names of Inspectors for promotion to the posts of Superintendent, applicants were eligible as they did have 8 years of qualifying service, yet they were not considered simply on the ground that their seniors did not have qualifying service of 8 years as Inspector. The law is well settled that when the Recruitment Rules specify the procedure how promotions are to be made, DPC has to be convened in accordance with those rules. In the process if certain seniors are to be left out because they did not have qualifying service, juniors cannot be ignored simply on the ground of seniors not fulfilling the criteria even though they fulfilled the criteria. It is also not disputed by the Respondents that applicants were indeed eligible to be considered for promotion in July 2002 itself. Therefore, when some other persons, who are also eligible and were not considered by the DPC, filed O.A. before the Tribunal. The Tribunal gave directions as mentioned in para 4 above after considering the judgments given by Hon'ble Supreme Court in the case of R.Prabha Devi and Ors. vs. Government of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms (JT 1988 (1) SC 488) and Scientific Advisor to Raksha Mantri and Anr. vs. V.M. Joseph (1998 (5) SCC 305) wherein it was held that when certain length of service in a particular cadre is prescribed then unless a person possesses that qualification, he cannot be considered eligible for promotion. If a junior is eligible, then a senior automatically will not become eligible because seniority cannot be substituted for eligibility. It was thus directed by the Tribunal to consider the

applicants for promotion to the post of Superintendent Group B irrespective of the fact that their seniors have not fulfilled the minimum qualification of 8 years of service. This judgment was given on 11.11.2003 and it was pursuant to this direction, that Respondents considered the claim of the applicants also while conducting review DPC because they were similarly situated as the applicants in O.A. No. 2475/2002. After holding the review DPC, applicants were promoted vide order dated 12.2.2004 and their seniority was also fixed by the said order (page 10). Now once they were promoted after following due process of law, that too pursuant to the directions given by the Tribunal, naturally a right accrued in favour of the applicants before us to continue in the posts of Superintendent Group B uninterruptedly. They could be reverted only for valid reasons that too after following due process of law. In the instant case, admittedly before reverting the applicants, no show cause notice was given to them. Therefore, reversion order is liable to be quashed on this very ground. It goes without saying that the order of reversion would have civil consequences and would definitely affect the rights of applicants. Therefore, the same could not have been issued without giving show cause notice to the applicants.

7. Even though the order is liable to be quashed on this very ground, but even otherwise we find the way Respondents have proceeded in this matter is absolutely unknown to the settled principles of law. As we have stated above, the judgment in O.A. No. 2475/2002 dated 11.11.2003 had already been complied with in February 2004 itself. Now once the vacancies had already been filled from amongst the eligible

candidates who fulfilled the eligibility criteria as on the cut off date, naturally their rights could not have been affected by a subsequent letter dated 18.6.2004, on the ground that relaxation is being given to the senior Inspectors from a retrospective date. Even otherwise, so long the eligible candidates were available in the department as per the Recruitment Rules, there was no justification to relax the eligibility condition only to accommodate the senior Inspectors as that would be contrary to the judgments given by the Hon'ble Supreme Court. In any case, since applicants were already promoted, if at all Respondents wanted to consider the senior Inspectors also by giving them relaxation to make them eligible, they could have considered them for the left over vacancies in case there were any left over vacancies. This also gets support from Respondent's counter where in page 2 they have stated that the Board issued directions for filling up of entire Group B Ministerial and non-Ministerial posts, which were created as a result of cadre restructuring of Central Excise Department and remained unfilled due to non-availability of eligible candidates with prescribed qualifying service by relaxing the qualifying service by one year. This sentence makes it clear that only unfilled vacancies were to be filled from amongst those seniors who were to be given the benefit of relaxation of one year for making them eligible for consideration for the post of Superintendent Group B."

9. Before us, Learned counsel for the Petitioner could not dispute the position that the promotion of the Respondents was done by a regularly held DPC by following the Recruitment Rules. The promotions of the Respondents were not ad-hoc or stop gap

arrangements. Having promoted the Respondents on a regular basis, they could not have been reverted to the lower post of Inspector except in accordance with law as a measure of penalty. Even if relaxation of qualifying service was granted to those Inspectors who were senior to the Respondents, to make them eligible for being considered for promotion to the post of Superintendent, Group B, such Inspectors could be promoted against any unfilled vacancies that might have remained unfilled after the promotion of the Respondent had been made. There was no question of the Petitioner's holding a review DPC to reconsider the cases of the Respondents, once they have been regularly promoted.

10. In the light of the aforesaid we find no error in the judgment of the Tribunal, which is well reasoned and considered. We accordingly dismiss the present petition.

VIPIN SANGHI, J.

A.K. SIKRI, J.

August 27, 2007
P.K. BABBAR